

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1470

Introduced by ~~Senators Steinberg and Leno~~ Senator Leno

February 19, 2010

~~An act to amend Section 3338 of the Civil Code, relating to personal property.~~ *An act to amend Section 5216.1 of, and to add Section 5412.5 to, the Business and Professions Code, relating to outdoor advertising.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1470, as amended, ~~Steinberg Leno. Personal property: liens.~~ *Outdoor advertising.*

The Outdoor Advertising Act regulates placement of advertising displays adjacent to and within specified distances of highways that are part of the national system of interstate and defense highways and federal-aid highways. The act provides that lawfully erected advertising displays include displays that were erected in compliance with state laws and local ordinances in effect at the time of their erection or displays that were subsequently brought into full compliance with state laws and local ordinances. The act provides that an advertising display whose use is modified after erection in a manner that causes it to become illegal is not a lawfully erected display. The act requires compensation to be paid to the owner of a lawfully erected advertising display if the display is compelled to be removed or its customary maintenance or use is limited, except as specified.

This bill would additionally provide that an advertising display whose height, orientation, size, or technology is modified after erection in a manner that causes it to become illegal is not a lawfully erected display. The bill would provide that a lawfully erected advertising display includes displays that were subsequently brought into, and maintained

in, full compliance with state laws, local ordinances, and local building permit requirements. The bill would authorize a civil action for disgorgement of specified revenues against the owner, and any person working in concert with the owner, of a display that is not lawfully erected or that is subsequently altered in violation of any state law, local ordinance, or local building permit requirement. The bill would also make an owner of those displays liable for a civil penalty up to \$2,500 for each day the violation continues. The bill would require moneys collected pursuant to these provisions to be paid to the General Fund or to the treasurer of the city or county where a judgment is entered and to the General Fund, as specified.

~~Existing law provides that one having a lien on personal property cannot recover damages for its conversion, after his lien is discharged, greater than the amount secured by the lien.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 5216.1 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 5216.1. “Lawfully erected” means, in reference to advertising
- 4 displays, advertising displays—~~which~~ *that* were erected in
- 5 compliance with state laws—~~and~~, local ordinances, *and local*
- 6 *building permit requirements* in effect at the time of their erection
- 7 or ~~which~~ *that* were subsequently brought into, *and maintained in,*
- 8 full compliance with state laws ~~and~~, local ordinances, ~~except that~~
- 9 ~~the~~ *and local building permit requirements. The term does not*
- 10 apply to any advertising display whose use, *height, orientation,*
- 11 *size, or technology* is modified after erection in a manner ~~which~~
- 12 *that* causes it to become illegal. There shall be a rebuttable
- 13 presumption pursuant to Section 606 of the Evidence Code that
- 14 an advertising display is lawfully erected if it has been in existence
- 15 for a period of five years or longer without the owner having
- 16 received written notice during that period from a governmental
- 17 entity stating that the display was not lawfully erected.
- 18 *SEC. 2. Section 5412.5 is added to the Business and Professions*
- 19 *Code, to read:*

1 5412.5. (a) Whenever an advertising display located anywhere
2 in the state is not lawfully erected or whenever an advertising
3 display located anywhere in the state that was erected in
4 compliance with state laws, local ordinances, and local building
5 permit requirements in effect at the time of its erection is
6 subsequently altered in violation of any state law, local ordinance,
7 or local building permit requirement, the Attorney General, any
8 district attorney or county counsel, or any city attorney or city
9 prosecutor may maintain a civil action against the display owner
10 and any person working in concert with the display owner, for the
11 disgorgement of all gross revenues with respect to the display
12 received by, or owed to, the display owner and any person working
13 in concert with the display owner while the display was illegally
14 erected or altered, even if the display was subsequently brought
15 into full compliance with state laws, local ordinances, and local
16 building permit requirements. In addition to any disgorgement of
17 gross revenues, the display owner shall be liable for a civil penalty
18 not to exceed two thousand five hundred dollars (\$2,500) for each
19 violation of any relevant state law, local ordinance, or local
20 building permit requirement. Each and every day a violation exists
21 shall constitute a separate and distinct offense.

22 (b) If an action under this section is brought by the Attorney
23 General, the moneys collected shall be paid to the General Fund.
24 If the action is brought by a district attorney or county counsel,
25 two-thirds of the moneys collected shall be paid to the treasurer
26 of the county in which the judgment was entered and one-third
27 shall be paid to the General Fund. If the action is brought by a
28 city attorney or city prosecutor, two-thirds of the moneys collected
29 shall be paid to the treasurer of the city in which the judgment was
30 entered and one-third shall be paid to the General Fund. This
31 subdivision shall not apply to any costs awarded pursuant to
32 subdivision (d).

33 (c) The procedures established in this section shall be in addition
34 to any criminal, civil, or other legal remedy established by law.

35 (d) Notwithstanding any other provision of law, if an action
36 results in the successful enforcement of this section, the agency
37 bringing the enforcement action may request the court to award
38 the agency its enforcement costs, including, but not limited to, its
39 reasonable attorneys' fees for pursuing the action.

1 (e) *It is the intent of the Legislature that this section strengthen*
2 *the ability of local governments to enforce zoning ordinances*
3 *governing advertising displays.*

4 SECTION 1. ~~Section 3338 of the Civil Code is amended to~~
5 ~~read:~~

6 ~~3338. A person having a mere lien on personal property, cannot~~
7 ~~recover greater damages for its conversion, from one having a~~
8 ~~right thereto superior to his or her right, after his or her lien is~~
9 ~~discharged, than the amount secured by the lien, and the~~
10 ~~compensation allowed by Section 3336 for loss of time and~~
11 ~~expenses.~~